

**ASSEMBLY BILL**

**No. 1209**

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**Introduced by Assembly Members Hagman and Ma**

February 27, 2009

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An act to amend Sections 853.5 and 853.6 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1209, as introduced, Hagman. Identification.

Under existing law, in any case in which a person is arrested for an offense declared to be an infraction or a misdemeanor, including a violation of a city or county ordinance or a violation of the Vehicle Code, the person may be released pursuant to specified procedures that include presenting to a peace officer satisfactory identification or signing a promise or notice to appear. Existing law also authorizes a peace officer to obtain a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on a promise to appear from the person arrested for an infraction if that person does not provide satisfactory evidence of identity, or when the person is arrested for a misdemeanor and he or she has no satisfactory identification.

This bill would also authorize a peace officer to alternatively require the arrestee to provide use of his or her thumbs or fingers or both in order to capture these images with a mobile fingerprint device.

Existing law provides that a person contesting a charge by claiming under penalty of perjury not to be the person issued a notice to appear under the circumstances described above may choose to submit a print to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. Existing

law also authorizes a local law enforcement agency providing this service to charge the requester no more than the actual costs.

This bill would provide that a person contesting a charge pursuant to those provisions may choose to allow an officer to capture images of his or her thumbprints or fingerprints or both for comparison with the images of the fingerprints or thumbprints or both of the arrestee.

Existing law regarding misdemeanor release procedures provides that an officer may book an arrested person prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the arrested person's court date.

This bill would authorize an officer, as an alternative to those procedures, to require the arrestee to provide use of his or her thumbs or fingers or both in order to capture images of the arrestee's thumbprints or fingerprints or both with a mobile fingerprint device. The bill would require the officer to provide the arrestee with verification by making an entry on the citation that images of the arrestee's thumbprints or fingerprints or both were captured with a mobile fingerprint device. The bill would also require the magistrate, judge, or court, upon the arrestee's appearance in court and before the proceeding begins, to order the defendant to provide verification that images of his or her thumbprints or fingerprints were captured and to take other actions regarding verification.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 853.5 of the Penal Code is amended to  
2     read:  
3     853.5. (a) Except as otherwise provided by law, in any case  
4     in which a person is arrested for an offense declared to be an  
5     infraction, the person may be released according to the procedures  
6     set forth by this chapter for the release of persons arrested for an  
7     offense declared to be a misdemeanor. In all cases, except as  
8     specified in Sections 40302, 40303, 40305, and 40305.5 of the  
9     Vehicle Code, in which a person is arrested for an infraction, a  
10    peace officer shall only require the arrestee to present his or her  
11    driver's license or other satisfactory evidence of his or her identity

1 for examination and to sign a written promise to appear contained  
2 in a notice to appear. If the arrestee does not have a driver's license  
3 or other satisfactory evidence of identity in his or her possession,  
4 the officer may *either: (1) require the arrestee to place a right*  
5 *thumbprint, or a left thumbprint or fingerprint if the person has a*  
6 *missing or disfigured right thumb, on the notice to appear or (2)*  
7 *require the arrestee to provide use of his or her thumbs or fingers*  
8 *or both in order to capture images of his or her thumbprints or*  
9 *fingerprints or both with a mobile fingerprint device.* Except for  
10 law enforcement purposes relating to the identity of the arrestee,  
11 no person or entity may sell, give away, allow the distribution of,  
12 include in a database, or create a database with, ~~this print~~ *these*  
13 *prints.* Only if the arrestee refuses to sign a written promise, has  
14 no satisfactory identification, ~~or~~ *refuses to provide a thumbprint*  
15 *or fingerprint, or refuses to allow the officer to capture images of*  
16 *his or her thumbprints or fingerprints or both when a mobile*  
17 *fingerprint device is available,* may the arrestee be taken into  
18 custody.

19 (b) A person contesting a charge by claiming under penalty of  
20 perjury not to be the person issued the notice to appear may choose  
21 to submit a right thumbprint, or a left thumbprint if the person has  
22 a missing or disfigured right thumb, to the issuing court through  
23 his or her local law enforcement agency for comparison with the  
24 one placed on the notice to appear. *When a mobile fingerprint*  
25 *device was used to capture images of the arrestee's thumbprints*  
26 *or fingerprints or both, a person contesting a charge pursuant to*  
27 *this subdivision may choose to allow an officer to capture images*  
28 *of his or her thumbprints or fingerprints or both for comparison*  
29 *with the images of the fingerprints or thumbprints or both of the*  
30 *arrestee.* A local law enforcement agency providing this service  
31 may charge the requester no more than the actual costs. The issuing  
32 court may refer the thumbprint submitted and the notice to appear,  
33 *or images captured by the mobile fingerprint device,* to the  
34 prosecuting attorney for comparison of the thumbprints *or*  
35 *fingerprints or both.* When there is no thumbprint or fingerprint  
36 on the notice to appear, or when the comparison of thumbprints  
37 *or fingerprints or both* is inconclusive, the court shall refer the  
38 notice to appear or copy thereof back to the issuing agency for  
39 further investigation, unless the court finds that referral is not in  
40 the interest of justice.

1 (c) Upon initiation of the investigation or comparison process  
2 by referral of the court, the court shall continue the case and the  
3 speedy trial period shall be tolled for 45 days.

4 (d) Upon receipt of the issuing agency's or prosecuting  
5 attorney's response, the court may make a finding of factual  
6 innocence pursuant to Section 530.6 if the court determines that  
7 there is insufficient evidence that the person cited is the person  
8 charged and shall immediately notify the Department of Motor  
9 Vehicles of its determination. If the Department of Motor Vehicles  
10 determines the citation or citations in question formed the basis  
11 of a suspension or revocation of the person's driving privilege, the  
12 department shall immediately set aside the action.

13 (e) If the prosecuting attorney or issuing agency fails to respond  
14 to a court referral within 45 days, the court shall make a finding  
15 of factual innocence pursuant to Section 530.6, unless the court  
16 finds that a finding of factual innocence is not in the interest of  
17 justice.

18 SEC. 2. Section 853.6 of the Penal Code is amended to read:

19 853.6. (a) In any case in which a person is arrested for an  
20 offense declared to be a misdemeanor, including a violation of any  
21 city or county ordinance, and does not demand to be taken before  
22 a magistrate, that person shall, instead of being taken before a  
23 magistrate, be released according to the procedures set forth by  
24 this chapter. If the person is released, the officer or his or her  
25 superior shall prepare in duplicate a written notice to appear in  
26 court, containing the name and address of the person, the offense  
27 charged, and the time when, and place where, the person shall  
28 appear in court. If, pursuant to subdivision (i), the person is not  
29 released prior to being booked and the officer in charge of the  
30 booking or his or her superior determines that the person should  
31 be released, the officer or his or her superior shall prepare a written  
32 notice to appear in a court.

33 In any case in which a person is arrested for a misdemeanor  
34 violation of a protective court order involving domestic violence,  
35 as defined in subdivision (b) of Section 13700, or arrested pursuant  
36 to a policy, as described in Section 13701, the person shall be taken  
37 before a magistrate instead of being released according to the  
38 procedures set forth in this chapter, unless the arresting officer  
39 determines that there is not a reasonable likelihood that the offense  
40 will continue or resume or that the safety of persons or property

1 would be imminently endangered by release of the person arrested.  
2 Prior to adopting these provisions, each city, county, or city and  
3 county shall develop a protocol to assist officers to determine when  
4 arrest and release is appropriate, rather than taking the arrested  
5 person before a magistrate. The county shall establish a committee  
6 to develop the protocol, consisting of, at a minimum, the police  
7 chief or county sheriff within the jurisdiction, the district attorney,  
8 county counsel, city attorney, representatives from domestic  
9 violence shelters, domestic violence councils, and other relevant  
10 community agencies.

11 Nothing in this subdivision shall be construed to affect a  
12 defendant's ability to be released on bail or on his or her own  
13 recognizance.

14 (b) Unless waived by the person, the time specified in the notice  
15 to appear shall be at least 10 days after arrest if the duplicate notice  
16 is to be filed by the officer with the magistrate.

17 (c) The place specified in the notice shall be the court of the  
18 magistrate before whom the person would be taken if the  
19 requirement of taking an arrested person before a magistrate were  
20 complied with, or shall be an officer authorized by that court to  
21 receive a deposit of bail.

22 (d) The officer shall deliver one copy of the notice to appear to  
23 the arrested person, and the arrested person, in order to secure  
24 release, shall give his or her written promise to appear in court as  
25 specified in the notice by signing the duplicate notice which shall  
26 be retained by the officer, and the officer may *either (1) require*  
27 *the arrested person, if he or she has no satisfactory identification,*  
28 *to place a right thumbprint, or a left thumbprint or fingerprint if*  
29 *the person has a missing or disfigured right thumb, on the notice*  
30 *to appear or (2) require the arrestee to provide use of his or her*  
31 *thumbs or fingers or both in order to capture images of his or her*  
32 *thumbprints or fingerprints or both with a mobile fingerprint*  
33 *device.* Except for law enforcement purposes relating to the identity  
34 of the arrestee, no person or entity may sell, give away, allow the  
35 distribution of, include in a database, or create a database with,  
36 ~~this print~~ *these prints*. Upon the signing of the duplicate notice,  
37 the arresting officer shall immediately release the person arrested  
38 from custody.

39 (e) The officer shall, as soon as practicable, file the duplicate  
40 notice, as follows:

1 (1) It shall be filed with the magistrate if the offense charged is  
2 an infraction.

3 (2) It shall be filed with the magistrate if the prosecuting attorney  
4 has previously directed the officer to do so.

5 (3) The duplicate notice and underlying police reports in support  
6 of the charge or charges shall be filed with the prosecuting attorney  
7 in cases other than those specified in paragraphs (1) and (2).

8 If the duplicate notice is filed with the prosecuting attorney, he  
9 or she, within his or her discretion, may initiate prosecution by  
10 filing the notice or a formal complaint with the magistrate specified  
11 in the duplicate notice within 25 days from the time of arrest. If  
12 the prosecution is not to be initiated, the prosecutor shall send  
13 notice to the person arrested at the address on the notice to appear.  
14 The failure by the prosecutor to file the notice or formal complaint  
15 within 25 days of the time of the arrest shall not bar further  
16 prosecution of the misdemeanor charged in the notice to appear.  
17 However, any further prosecution shall be preceded by a new and  
18 separate citation or an arrest warrant.

19 Upon the filing of the notice with the magistrate by the officer,  
20 or the filing of the notice or formal complaint by the prosecutor,  
21 the magistrate may fix the amount of bail that in his or her  
22 judgment, in accordance with Section 1275, is reasonable and  
23 sufficient for the appearance of the defendant and shall endorse  
24 upon the notice a statement signed by him or her in the form set  
25 forth in Section 815a. The defendant may, prior to the date upon  
26 which he or she promised to appear in court, deposit with the  
27 magistrate the amount of bail set by the magistrate. At the time  
28 the case is called for arraignment before the magistrate, if the  
29 defendant does not appear, either in person or by counsel, the  
30 magistrate may declare the bail forfeited, and may, in his or her  
31 discretion, order that no further proceedings shall be had in the  
32 case, unless the defendant has been charged with a violation of  
33 Section 374.3 or 374.7 of this code or of Section 11357, 11360,  
34 or 13002 of the Health and Safety Code, or a violation punishable  
35 under Section 5008.7 of the Public Resources Code, and he or she  
36 has previously been convicted of a violation of that section or a  
37 violation that is punishable under that section, except in cases  
38 where the magistrate finds that undue hardship will be imposed  
39 upon the defendant by requiring him or her to appear, the

1 magistrate may declare the bail forfeited and order that no further  
2 proceedings be had in the case.

3 Upon the making of the order that no further proceedings be  
4 had, all sums deposited as bail shall immediately be paid into the  
5 county treasury for distribution pursuant to Section 1463.

6 (f) No warrant shall be issued for the arrest of a person who has  
7 given a written promise to appear in court, unless and until he or  
8 she has violated that promise or has failed to deposit bail, to appear  
9 for arraignment, trial, or judgment or to comply with the terms  
10 and provisions of the judgment, as required by law.

11 (g) The officer may book the arrested person prior to release or  
12 indicate on the citation that the arrested person shall appear at the  
13 arresting agency to be booked or indicate on the citation that the  
14 arrested person shall appear at the arresting agency to be  
15 fingerprinted prior to the date the arrested person appears in court.  
16 If it is indicated on the citation that the arrested person shall be  
17 booked or fingerprinted prior to the date of the person's court  
18 appearance, the arresting agency at the time of booking or  
19 fingerprinting shall provide the arrested person with verification  
20 of the booking or fingerprinting by making an entry on the citation.  
21 If it is indicated on the citation that the arrested person is to be  
22 booked or fingerprinted, the magistrate, judge, or court shall, before  
23 the proceedings begin, order the defendant to provide verification  
24 that he or she was booked or fingerprinted by the arresting agency.  
25 If the defendant cannot produce the verification, the magistrate,  
26 judge, or court shall require that the defendant be booked or  
27 fingerprinted by the arresting agency before the next court  
28 appearance, and that the defendant provide the verification at the  
29 next court appearance unless both parties stipulate that booking  
30 or fingerprinting is not necessary.

31 *(h) As an alternative to the procedures set forth in subdivision*  
32 *(g), prior to release, the officer may instead require the arrestee*  
33 *to provide use of his or her thumbs or fingers or both in order to*  
34 *capture images of the arrestee's thumbprints or fingerprints or*  
35 *both with a mobile fingerprint device. The officer shall provide*  
36 *the arrestee with verification by making an entry on the citation*  
37 *that images of the arrestee's thumbprints or fingerprints or both*  
38 *were captured with a mobile fingerprint device. Upon the arrestee's*  
39 *appearance in court, the magistrate, judge, or court shall, before*  
40 *the proceeding begins, order the defendant to provide verification*

1 *that images of his or her thumbprints or fingerprints were captured*  
2 *by the arresting officer with a mobile fingerprinting device. If the*  
3 *defendant provides the verification, the magistrate, judge, or court*  
4 *shall order the defendant to be fingerprinted immediately by the*  
5 *court. If the defendant cannot produce the verification, the*  
6 *magistrate, judge, or court shall require that the defendant be*  
7 *booked or fingerprinted by the arresting agency before the next*  
8 *court appearance, and that the defendant provide the verification*  
9 *at the next court appearance unless both parties stipulate that*  
10 *booking or fingerprinting is not necessary.*

11 ~~(h)~~

12 (i) A peace officer shall use the written notice to appear  
13 procedure set forth in this section for any misdemeanor offense in  
14 which the officer has arrested a person without a warrant pursuant  
15 to Section 836 or in which he or she has taken custody of a person  
16 pursuant to Section 847.

17 ~~(i)~~

18 (j) Whenever any person is arrested by a peace officer for a  
19 misdemeanor, that person shall be released according to the  
20 procedures set forth by this chapter unless one of the following is  
21 a reason for nonrelease, in which case the arresting officer may  
22 release the person, or the arresting officer shall indicate, on a form  
23 to be established by his or her employing law enforcement agency,  
24 which of the following was a reason for the nonrelease:

25 (1) The person arrested was so intoxicated that he or she could  
26 have been a danger to himself or herself or to others.

27 (2) The person arrested required medical examination or medical  
28 care or was otherwise unable to care for his or her own safety.

29 (3) The person was arrested under one or more of the  
30 circumstances listed in Sections 40302 and 40303 of the Vehicle  
31 Code.

32 (4) There were one or more outstanding arrest warrants for the  
33 person.

34 (5) The person could not provide satisfactory evidence of  
35 personal identification.

36 (6) The prosecution of the offense or offenses for which the  
37 person was arrested, or the prosecution of any other offense or  
38 offenses, would be jeopardized by immediate release of the person  
39 arrested.



1 (7) There was a reasonable likelihood that the offense or offenses  
2 would continue or resume, or that the safety of persons or property  
3 would be imminently endangered by release of the person arrested.

4 (8) The person arrested demanded to be taken before a  
5 magistrate or refused to sign the notice to appear.

6 (9) There is reason to believe that the person would not appear  
7 at the time and place specified in the notice. The basis for this  
8 determination shall be specifically stated.

9 The form shall be filed with the arresting agency as soon as  
10 practicable and shall be made available to any party having custody  
11 of the arrested person, subsequent to the arresting officer, and to  
12 any person authorized by law to release him or her from custody  
13 before trial.

14 ~~(j)~~

15 (k) Once the arresting officer has prepared the written notice to  
16 appear and has delivered a copy to the person arrested, the officer  
17 shall deliver the remaining original and all copies as provided by  
18 subdivision (e).

19 Any person, including the arresting officer and any member of  
20 the officer's department or agency, or any peace officer, who alters,  
21 conceals, modifies, nullifies, or destroys, or causes to be altered,  
22 concealed, modified, nullified, or destroyed, the face side of the  
23 remaining original or any copy of a citation that was retained by  
24 the officer, for any reason, before it is filed with the magistrate or  
25 with a person authorized by the magistrate to receive deposit of  
26 bail, is guilty of a misdemeanor.

27 If, after an arrested person has signed and received a copy of a  
28 notice to appear, the arresting officer determines that, in the interest  
29 of justice, the citation or notice should be dismissed, the arresting  
30 agency may recommend, in writing, to the magistrate that the  
31 charges be dismissed. The recommendation shall cite the reasons  
32 for the recommendation and shall be filed with the court.

33 If the magistrate makes a finding that there are grounds for  
34 dismissal, the finding shall be entered in the record and the charges  
35 dismissed.

36 Under no circumstances shall a personal relationship with any  
37 officer, public official, or law enforcement agency be grounds for  
38 dismissal.

39 ~~(k)~~

(l) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. *When a mobile fingerprint device was used to capture images of the arrested person's thumbprints or fingerprints or both, a person contesting a charge pursuant to this subdivision may choose to allow an officer to capture images or his or her thumbprints or fingerprints or both for comparison with the images of the fingerprints or thumbprints or both of the arrested person.* A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear, *or images captured by the mobile fingerprint device*, to the prosecuting attorney for comparison of the thumbprints *or fingerprints or both*. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints *or fingerprints* is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

1 (5) The citation or notice to appear may be held by the  
2 prosecuting attorney or issuing agency for future adjudication  
3 should the arrestee who received the citation or notice to appear  
4 be found.

5 ~~(t)~~

6 (m) For purposes of this section, the term “arresting agency”  
7 includes any other agency designated by the arresting agency to  
8 provide booking or fingerprinting services.

O